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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. .....

J. M. WOOD MANUFACTURING COMPANY, INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

and

SOUTHWEST REGIONAL JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Statute:

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National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*):

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SOUTHWEST REGIONAL JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner (hereinafter referred to as "the Company"), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case which has permitted the National Labor Relations Board to give controlling weight in making a unit determination to the extent of union organization, a decision in plain conflict with the decision of two other courts of appeals, the Ninth Circuit in *Westward-Ho Hotel Co.* v. *NLRB*, 437 F.2d 1110 (C.A. 9, 1971) and *May Department Stores Company* v. *NLRB*, 454 F.2d

148 (C.A. 9, 1972) certiorari denied 93 S. Ct. 116 ("Mr. Justice Douglas would grant certiorari") and the District of Columbia Circuit in *Local 1325, Retail Clerks International Association* v. *NLRB* (*Adams Drug Co.*), 414 F.2d 1194 (1969) and contrary to the principles set forth by other courts of appeals.

Opinions Below

The opinion of the court of appeals (App. A, *infra*, pp. 1a-13a) is reported at 466 F.2d 201. The Board's decision and order (App. C, *infra*, pp. 17a-29a) are reported at 188 NLRB No. 4; the decision of the Regional Director in the underlying representation case (App. C, *infra*, pp. 30a-37a) is not officially reported.

Jurisdiction

The judgment of the court of appeals (App. B, *infra*, 14a-15a) was entered on September 14, 1972. A timely petition for rehearing was denied on November 13, 1972 (App. B, *infra*, 16a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Question Presented

Section 9(c)(5) of the National Labor Relations Act provides that in determining whether "a unit (of employees) is appropriate" for collective bargaining purposes, "the extent to which the employees have organized shall not be controlling". The question is whether giving the petitioning union precisely what it wants just because it asks for it—when the Board itself recognizes that there is ample support for a finding that a different unit is appropriate—is the same as giving controlling weight to the extent the union has successfully organized a group of employees.

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Statute Involved

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 152 *et seq.*) are as follows:

> Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:
>
> * * * * *
>
> (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: * * *
>
> (c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board— * * *
>
> * * * * *
>
> (5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

Statement

A. The Uncontested Facts.

The Company manufactures men's work clothing and sportswear in four plants located at Waco, Temple, Hillsboro and Dublin, Texas (App. 8a-11a).

The Company's principal manufacturing facility is at its Waco plant where there is an overall manager and director of manufacturing (App. 8a-10a).

As noted by the Board, "there is ample support [in the Record] for considering all four plants as a multiplant unit" (App. 11a, 33a).

The production requirements, including plant scheduling for all four plants, is determined centrally at Waco by the Company's production planning committee. All necessary materials are ordered, processed, and warehoused and dispersed to the separate plants as needed. The central cutting department at Waco marks and cuts the material and sees that it is properly ticketed and made ready for the sewing lines in each of these plants. As recognized by the court of appeals, "[t]he character of these operations, serving all plants to some degree, tends to integrate the business" (App. 4a, 32a-33a).

The cut material is then shipped by Company truck to the sewing lines. Each of the four plants contains sewing lines where the sewing operation is performed. Waco has seven sewing lines, Temple has two sewing lines, Hillsboro and Dublin have one each (A. 13, 15, 98, 101).[1] The locations are necessitated because the great number of people employed in the factory to perform this function "would render it impossible to have all manufacturing under one roof, in one building" (A. 13).

After the parts are sewn, they are returned to Waco where all of the sewn products are further processed, going first to the central pressing department where they are pressed and checked for defects. After this, the sewn products are taken to the central shipping department where they are properly assorted and shipped to customers (App. 32a, 38a, 40a).

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[1] "A" references are to pages in the original Appendix filed with the Court of Appeals.

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The court of appeals recognized that each sewing line had the same general function and labor policy primarily determined at a central office plus the other factual nexus tended to show community of interest requiring that the employees be grouped in a single bargaining unit (App. 5a).

B. The Proceedings Before the Board.

On November 25, 1968, the Union[2] filed a petition seeking a bargaining unit consisting of all of the employees at the Company's Waco, Texas plant (A. 117-119). When the employer asserted that as a result of the complete integration of production, employees and administration, the only appropriate unit consisted of an overall unit of the persons employed at all four plants, a hearing was scheduled for December 20, 1968. Prior to the hearing, the Union notified the Company that it was also organizing the Dublin plant (A. 130). At the hearing, Company counsel reasserted its position that the appropriate unit was a multiplant unit, and any lesser unit would lead to a fragmentation of the operations. The Regional Director noted that "There is much to be said on behalf of the position taken by the Employer to find a multiplant unit", and went on to explain the detailed community of interest shared by the four plants (App. 32a-33a). After an extensive discussion of the community of interest, the Regional Director made the following finding (App. 33a) (Emphasis supplied)

> "Thus, as we have seen from the point of sharing a community of interest, there is ample support for considering all four plants as a multiplant unit. However, other factors are not present which would compel finding a multiplant unit to be appropriate. *No union is seeking to represent the employees in all*

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[2] Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO.

> *four plants, and there is no previous history of collective bargaining among the employees to support such a unit contention.* As set forth below, we have found that there is an appropriate unit commensurate with the unit sought by the Petitioner in the Waco plant."

The Regional Director went on to reject the Company's contention that the "Union's request of the Waco plant as a unit represents Petitioner's extent of organization and, therefore, as such should be denied • • • The Act proscribes that such a test as extent of organization be given controlling weight which is not done in this case" (App. 35a). Despite lip service to the Act, the Regional Director gave the Union the unit that it had sought.

While the Company sought review of this decision by the Board, the Union, in a leaflet distributed to the Waco employees,[1] made it clear that this Unit was selected only because that was the extent of Union organization. The Union stated (App. D, 42a, *infra*):

> "The Amalgamated pledges to you that just as soon as the workers at Dublin, Hillsboro and Temple ask the Union to file for Labor Board Elections in each of those plants, that is exactly what we will do".

The Board once again ignored the language of 9(c)(5) and denied the Employer's Request for Review. The Board was merely adhering to its previously stated policy: "In the absence of any history of collective bargaining, where no labor organization is seeking a broader appropriate unit, the Board has long held that the petitioning labor organization needs only to establish that the group

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[1] This was submitted by the Company to the Board in its Request for Review of the Regional Director's decision, dated 2/5/69 (A. 147-178), and is reproduced as Appendix D for the convenience of this Court.

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of employees it has attempted to organize and seeks to represent is 'an appropriate unit' ", *Adams Drug Co.*, 164 NLRB 594, 595 (1967) enforcement denied 414 F.2d 1194 (C.A.D.C. 1969). Similarly in *Gordon Mills, Inc.*, 145 NLRB 771, 773-774 (1963), relied on by the Regional Director at App. 35a *infra*, the Board plainly stated in upholding the union's request that a single plant be the appropriate unit that "It has not been the Board's policy to compel labor organizations to seek representation in a larger unit unless the unit requested is inapproproate".

The Union won the representation election conducted by the Board by a four vote margin: 389 votes were cast for the Union and 385 votes cast against the Union (A. 294). The Union was certified as the exclusive bargaining agent. The Company refused to bargain with the Union, an unfair labor practice proceeding ensued, and the Board found that the Company had committed a technical violation of Section 8(a)(5) and (1) of the Act in order to obtain judicial review *inter alia* of the Board's unit determination.[4] The Board ordered the Company to bargain with the Union upon request (App. C, *infra*, pp. 26a-28a).

C. The Decision of the Court of Appeals.

The court of appeals enforced in full the Board's order without any discussion of the weight given by the Board to the extent of organization, the very crux of the Board's decision. Instead, in upholding the Board's decision, the court found that the unit determination was not an abuse of discretion and relied on *Banco Credito y Ahorro* v. *NLRB*, 390 F.2d 110 (C.A. 1, 1968) certiorari denied 393 U.S. 832[5] (App. 5a), a case distinguished by the Sixth Circuit in *NLRB* v. *Pinkerton's Inc.*, 416 F.2d 627, 631

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[4] See *Magnesium Casting Co.* v. *NLRB*, 401 U.S. 137 (1971).

[5] The petition for certiorari in that case was untimely, since it was filed on the 91st day.

(1969) as one, unlike the integrated multiplant unit at bar, in which each of the branch banks was separate and independent.

Reasons for Granting the Writ

In upholding the Board's unit determination, the court of appeals has reached a decision contrary to the plain language of Section 9(c)(5) and its legislative history where Congress has expressly prohibited the Board from giving controlling weight to the extent to which the employees have organized. Moreover, there is a split of authority among the circuits as to the weight to be given the extent to which the employees have organized. Two Courts of Appeals; the Third Circuit in *NLRB* v. *Puritan Sportswear Corp.*, 385 F.2d 142 (C.A. 3, 1967) and the court below now hold that the Board has not violated the mandate of Section 9(c)(5) by tacitly, as here, making extent of organization controlling in its unit determinations: Three Courts of Appeals the Fourth, the Ninth, and the U. S. Court of Appeals for the District of Columbia have held such determinations to "be violative of the statutory scheme, by permitting a minority of employees in a highly integrated, interdependent and interrelated facility to impose the will of a minority [of the employees] on the majority of the others employed and deprives the majority of its guaranteed right of freedom of choice". *NLRB* v. *Harry T. Campbell Sons' Corporation*, 407 F.2d 969, 978 (C.A. 4, 1969) *Winters*, C.J. dissenting and citing *Singer Sewing Machines Company* v. *NLRB*, 329 F.2d 200, 205 (C.A. 4, 1969), *Local 1325, Retail Clerks International Association* v. *NLRB* (*Adams Drug Co.*), 414 F.2d 1194 (C.A. D.C. 1969); *Westward-Ho Hotel Co.* v. *NLRB*, 437 F.2d 1110, 1112-1113 (C.A. 9, 1971); *May Department Stores Company* v. *NLRB*, 454 F.2d 148, 152 (C.A. 9, 1972) certiorari denied 93 S. Ct. 116. Resolution of this issue, therefore, is of manifest importance in the administration of this Act. Review by this Court is thus warranted.

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1. Section 9(b) of the Act requires the Board to decide "in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *." Section 9(c)(5) provides that:

> "In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling".

Section 9(c)(5) which was added by the 1947 Taft-Hartley amendments, was originally proposed by the House Labor Committee. Congressman Hartley, as Chairman of the Committee, submitted the following report (House Report No. 245 on H.R. 3026 at pp. 37-38, 80th Congress, 1st Sess.):[4]

> "Section 9(f)(3) strikes at a practice of the Board by which it has set up as units appropriate for bargaining whatever group or groups the petitioning union has organizeed at the time. Sometimes, but not always, the Board pretends to find reasons other than the extent to which the employees have organized as ground for holding such units to be appropriate (*Matter of New England Spun Silk Co.*, 11 N.L.R.B. 852 (1939); *Matter of Botany Worsted Mills*, 27 N.L.R.B. 687 (1940)). While the Board may take into consideration the extent to which employees have organized, this evidence should have little weight, and, as section 9(f)(3) provides, is not to be controlling. If, for example, a group votes itself out of a unit

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[4] This report was reproduced in 1 Legislative History of the Labor Management Relations Act of 1947 (hereinafter referred to as "1947 Leg. Hist.") at pp. 328-329.

> under section 9(f)(2), it does not necessarily constitute a separate unit that is appropriate for the purposes of collective bargaining.
>
> The Act still leaves the new Board wide discretion in setting up bargaining units".

Since there was no comparable provision in the Senate amendment, the conference committee retained this provision of the House bill and lettered it Section 9(c). (H. Conference Rept. No. 510 on H.R. 3020 at p. 48 1 1947 Leg. Hist. at p. 552).

Despite this very clear statement of what Congress intended by the enactment of the provision, the Labor Board over the past twenty-five years as in the case at bar has continued its policy of "pretend(ing) to find reasons other than the extent to which the employees have organized as grounds for holding such units to be appropriate". Indeed, this case is plainly analogous to *Matter of New England Spun Silk Co.*, 11 NLRB 852, 4 LRRM 37 (1939) specifically disapproved by Congress, *supra*.

In *New England Spun Silk Corporation*, 11 NLRB 852, the Company operated two plants, separated seven miles apart. Each plant did different parts of the production process with the linking continuity, as here, the Company's own trucking facilities. When the Union had organized one plant and not the other, the Board upheld the organization of a single plant to be the appropriate unit despite the Board's recognition that "Labor difficulties creating a stoppage at either plant would necessarily result in a shutdown of both" (11 NLRB at 855). The Board there upheld the single plant unit determination because "we can find no valid reason * * * to change the direction and form which organization has already taken, and thereby contravene the express desire of the employees" (11 NLRB at 855).

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Although Congress specifically disapproved this decision, and stated that the extent of organization was entitled to "little weight" (H.R. 245, *supra*), the Board, as in this case, has consistently considered the extent or lack of organization (See App. 33a).

The Regional Director's statement that he did not give "controlling weight" to the extent of organization is plainly self-serving (App. 33a). The Board's statement speaks for itself (App. 33a):

> "Thus, as we have seen from the point of sharing a community of interest, there is ample support for considering all four plants as a multiplant unit. However, other factors are not present which would compel finding a multiplant unit to be appropriate. No union is seeking to represent the employees in all four plants, and there is no previous history of collective bargaining among the employees to support such a unit contention."

Thus, the Board itself recognized that the only factor but for which a multiplant unit would have been "compelled" was the lack of a union seeking to represent all four integrated sewing lines. A clearer statement could not be expected from the Board in a case where as here, it gives "controlling weight" to the union's organizing attempt. In any other factual circumstances, any other unit determination would have been plainly inappropriate and this question would not have been reached.

Indeed, in *Adams Drug Co.*, 164 NLRB 594, 595 (1967), the Board found in analogous circumstance that a number of factors indicated that a different unit would be appropriate but "in the absence of any history of collective bargaining, where no labor organization is seeking a broader appropriate unit, the Board has long held that the petitioning labor organization needs only to establish that this group of employees it has attempted to organize and seeks to represent is 'an' appropriate unit". Re-

versing that decision, the Court of Appeals for the District of Columbia Circuit in *Local 1325, Retail Clerks International Association* v. *NLRB (Adams Drug Co.)*, 414 F.2d 1194 (C.A. D.C., 1969) declined to uphold that unit determination by pointing out that "the circumstances of this case suggest that the Board has violated the mandate of Section 9(c)(5) as well, by tacitly making extent of organization 'controlling'. Apart from the fact that the Union requested it, the Board's choice of a state-wide unit appears to be without substantial justification" (414 F.2d at 1205).

In *May Department Stores Company* v. *NLRB*, 454 F.2d 148 (C.A. 9, 1972) certiorari denied, 93 S. Ct. 116 and *Westward-Ho Hotel Co.* v. *NLRB*, 437 F.2d 1110, 1112-1113 (C.A. 9, 1971), the Ninth Circuit rejected attempts by the Labor Board to justify different bargaining units of different sizes as appropriate where, as here, although a number of reasons were cited for a unit determination, the clearly controlling reason was the fact that "no other labor organization seeks a broader unit" and concluded that in itself "strongly suggests that the Board's action was controlled by extent of organization" (437 F.2d at 1114-1115, See also 454 F.2d at 152).

Indeed, the Board's action in this case seems to be a retrogression to *New England Spun Silk Company*, 11 NLRB 852 (1939) which was precisely the kind of unit determination Congress intended to proscribe. As was *New England Spun Silk Company*, it is clear from the Board's own findings that this was a fully integrated operation. A work stoppage at any plant, whether it be in the sewing process at Dublin or in the receiving and cutting department at Waco would affect the entire work process, which was linked together by the "Interplant drivers • • • who operate from the Waco plant, delivering merchandise from there to the other three plants and returning with garments that have been sewed at those three" (App. 6a).

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Here, as in *NLRB* v. *Harry T. Campbell Sons' Corporation*, 407 F.2d 969, 979 (C.A. 4, 1969), "If the Board's selection of the appropriate bargaining unit in this case were to stand and bargaining is undertaken, neither party on the stage at the bargaining table could overlook the fact that standing in the wings are * * * other employees of the same employer, employees who cannot be separated in terms of labor relations from the * * * group of employees directly involved in the bargaining negotiations. The Company would be required to measure any economic proposal submitted for its consideration with reference to the cost of extending the same proposed concessions to its other Texas employees. At the same time the Company would be compelled to evaluate the risk of a strike and the economic possibilities involved." And indeed, this Union seeks to represent not only the employees at Dublin, Hillsboro and Temple, but has admitted an interest in representing these additional employees once it believes that the union can win an election (App. 42a, A.130).

The fact that the plants in *New England Spun Silk Company* were separated by 7 miles and the plants in this case are separated from Waco, by 30 miles to Temple, 35 miles to Hillsboro, and 85 miles to Dublin, is plainly not a valid distinction. Indeed, unlike the Court of Appeals, the Board merely tossed out the geographic separation as an additional factor in rationalizing its overt determination to support the extent of organization (App. 31a). The Court's reference to *Banco Credito y Ahorro* v. *NLRB*, 390 F.2d 110 (C.A. 1, 1968) is plainly not applicable to the case at bar, where the Board itself found "there is ample support for considering all four plants as a multiplant unit" (App. 33a). The Sixth Circuit in *NLRB* v. *Pinkerton's Inc.*, 416 F.2d 627, 631 in finding that "the Board went too far in concluding that * * * units were geographically independent" expressly distinglished *Banco Credit* as a case where "each of the branch banks in the outside area was separate and independent" See also *NLRB* v. *Purity Food Stores,*

376 F.2d 497 (C.A. 1, 1967), certiorari denied 389 U.S. 959, where the First Circuit reversed the Board's unit determination, recognized that "9(c)(5) of the Act forbidding the Board to treat the extent to which employees have organized as 'controlling' * * * and" giving the employer reasonably adequate protection from the "disruptive effects of piecemeal unionization" (376 F.2d at 501).

Conclusion

The Court of Appeals for the Ninth Circuit stated, in language plainly applicable to the case at bar in *May Department Stores Company* v. *NLRB*, 454 F.2d 148, 152, certiorari denied, 93 S. Ct. 119:

> "Giving the petitioning union precisely what it wants just because it asks for it is the same as giving controlling weight to the extent the union has organized a group of employees * * * [T]his is prohibited by Section 9(c)(5) of the Act".

The court of appeals for the Fifth Circuit in this case has ruled contrary to the Ninth Circuit in *May Department Stores*, from which the Labor Board had unsuccessfully sought certiorari on "an important [question] in the administration of the Act" (Petition for a Writ of Certiorari, No. 71-1646 at pp. 12-13). For the foregoing reasons, the Petition for a writ of certiorari should be granted.

Dated: December 20, 1972

Respectfully submitted,

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APPENDIX

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APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2677

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

J. M. WOOD MANUFACTURING COMPANY, INC.,
Respondent.

Application for Enforcement of an Order of the National Labor Relations Board (Texas Case)

(August 23, 1972)

Before AINSWORTH, GODBOLD and MORGAN, Circuit Judges.

GODBOLD, Circuit Judge. We grant an enforcement order against the company for refusal to bargain.[1]

The most important issue is whether the company has shown sufficient reason for us to overturn the determination of the Regional Director that an appropriate bargaining unit is the company's plant at Waco,

[1]The Board's decision and order are reported at 188 NLRB No. 4.

Texas.[2] The company contends that the evidence compelled a finding that the only appropriate unit was a multiplant unit which included its other three plants in other Texas cities. We attach as an appendix to this opinion findings of the Regional Director which set out the facts on this issue.

The Board's discretion in making unit determination is very broad, and our standard of review is narrow. *NLRB v. Schill Steel Products, Inc.*, 340 F.2d 568 (5th Cir. 1965). The fact that a multiplant unit might also have been appropriate is not a basis for overturning the Board's determination. *NLRB v. Fidelity Maintenance & Construction Co.*, 424 F.2d 707, 709 (5th Cir. 1970). The Board need choose only *an* appropriate unit, not *the most* appropriate unit. *State Farm Mutual Ins. Co. v. NLRB*, 411 F.2d 356 (7th Cir. 1969).

There are a multitude of factors which the Board and the courts have employed as indicia in cases where the issue has been single versus multi units, including: operational integration of the units; geographical proximity; authority of the local unit supervisor, especially with regard to matters that traditionally are the subject of collective bargaining, such as hiring, firing, discipline, rates of pay, hours of employment, and benefits; type of work done by the employees in the unit; numerical size of the units; uniformity of wages, hours, working conditions and benefits; contact between employees at one unit and those at other units; interchange of employees; centralization of labor relations

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[2]The Board denied a request to review the Regional Director's decision.

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and collective bargaining. One case will emphasize one or more factors, the next will place more importance upon other factors, and what is emphasized in one may be deemphasized or distinguished in another. Harmonizing the cases into a uniform pattern is not wholly feasible, because of the factual nature of the determination, the broad discretion in the agency in making one of several acceptable choices, and the limited scope of correctly applied judicial scrutiny.

In this instance we are not able to say that the Regional Director was required to designate a multiplant unit or that he abused his discretion in designating the Waco plant as the unit. The Waco plant is not merely a sewing line like the other three plants, although it includes a sewing operation with a manager therefor. As the Regional Director pointed out, Waco is also the company's principal office and place of business. Some of the operations located at Waco and not at the other plants are these: overall management; cutting of material; pressing and shipping assembled garments; central purchasing and warehousing of materials; technical service department for sewing machinery and equipment and techniques; central research and development department for new machinery and equipment; central maintenance for plants and sewing machinery; central fabrication of samples; central manufacture and repair of furniture and other wood equipment; central storage for machinery and equipment; central personnel department which maintains personnel files (with appropriate duplicate files at each plant), establishes hiring tests and termination standards; quality control; central training department

for sewing machine operators; central industrial engineering department which classifies jobs and determines and schedules overtime. The character of these operations, serving all plants to some degree, tends to integrate the business. But at the same time the presence of these numerous operations and departments, located at Waco, tends to establish the character of the Waco plant as much more than another sewing line.

The Regional Director was entitled to give weight to the distance between the plants.[3] Other factors undergirding his conclusion are the effective participation by local plant managers in hiring and discharges, the small number of interplant transfers of employees, and the extent of organization, so long as not controlling (no union had petitioned to represent the employees at all four plants).

The company places its strongest reliance upon *NLRB v. Davis Cafeteria*, 396 F.2d 18 (5th Cir. 1968), which rejected a Board-designated unit composed of two of eight cafeterias located in the vicinity of Miami, Florida. That case emphasized that the general office department of the company, located in Miami, determined labor policy, pay, hours and insurance benefits, while local managers had little authority over

[3] See NLRB v. Frisch's Big Boy Ill-Mar Inc., 356 F.2d 895 (7th Cir. 1966), in which the court considered the appropriate unit to be a chain of 10 restaurants located in one city, but the parties agreed that an eleventh restaurant located 60 miles away in another city could constitute a correct unit. In Davis Cafeteria, Inc., v. NLRB, 396 F.2d 18 (5th Cir. 1968), discussed below, all the cafeterias were in and around the city of Miami.

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substantive subjects of collective bargaining. We agree with *Continental Insurance Co. v. NLRB*, 409 F.2d 727 (2d Cir. 1969), that *Davis* and its antecedents do not mean that centralizing final decisions on labor policies is alone a determinative factor and that *Davis* "showed an awareness of circumstances which would justify fractionating an employer's organization." *Id.* at 729. The present situation would more closely parallel *Davis* if the question were whether the plants at Temple, Hillsboro and Dublin were to be in one unit or fragmented into more than one. With each sewing line having the same general function, and labor policy primarily determined at a central office, plus the other factual nexuses tending to show community of interest, the sewing operations at different sites resemble the separate cafeterias in *Davis*. But whether the combined sewing line and central office at Waco may be in a single unit or is required to be put into a unit with all the other geographically separated sewing lines is another question.

Banco Credito y Ahorro v. NLRB, 390 F.2d 110 (1st Cir. 1968), sustained as appropriate a single unit composed of one of 29 bank branches located at various places in Puerto Rico, although policies including labor matters were centrally determined. *Compare NLRB v. Frisch's Big Boy Ill-Mar Inc.*, 356 F.2d 895 (7th Cir. 1966), which found inappropriate a unit composed of one of a chain of 10 restaurants located in Indianapolis, Ind. and having a separate general office. Also the parties agreed that an eleventh restaurant located 60 miles away in another city could constitute a separate unit.

The present case is similar to *NLRB v. Schill Steel Products, Inc., supra,* insofar as company structure is concerned. The employer maintained its central office and warehouse in Houston, Texas, and branch warehouses at Dallas and Odessa, Texas and Tulsa, Oklahoma. We upheld the Board's determination of a single unit at Houston against the company's contention that a company-wide unit was required.

Thus we conclude that designation of Waco as a single-plant unit was within the Board's discretion. The only other issue deserving comment is the claim of the company that over-the-road (as distinguished from interplant) truck drivers should have been included in the unit. Four of the ten over-the-road (OTR) drivers voted, and their ballots were challenged and have been sealed. The vote was 389 to 385 in favor of the union, so these four votes, if unsealed and against the union, could force another election.

In resolving the challenges the Regional Director found that the OTR drivers did not share sufficient community of interest to warrant their inclusion in the unit consisting of production and maintenance employees at the Waco plant. Interplant drivers were included in the unit. They operate from the Waco plant, delivering merchandise from there to the other three plants and returning with garments that have been sewed at those three. They are paid hourly, punch a time clock, and return to the Waco plant each night. Thus they are in day to day contact with employees at Waco. The OTR drivers, on the other hand, drive between the Waco plant and the various suppliers of the

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company. They are separately supervised. Their trucks are maintained at and dispatched from a truck stop in Waco, since there are no accommodations for them at the plant. Their only contact with employees in the bargaining unit at Waco is approximately once a week, for clerical purposes. They are paid a salary with overtime and are on the road for days at a time. Under these factual determinations, supported by substantial evidence, the Regional Director's decision may not be overturned.

We agree with the Board that the OTR drivers were not stipulated to be members of the unit. The list of included employees included "truck drivers." A company official described this group of employees as follows:

> Truck Drivers. Truck drivers are used to move cut work, the component parts, from Waco to Hillsboro, to Dublin, and to Temple. They pick up assembled garments from the sewing floor in Waco, Hillsboro — not in Waco — but in Hillsboro, Temple and Dublin, and bring back to Waco and deliver to the Finishing Department.

The company relies upon a reference in the record to "truck drivers" where it is said: "Their inclusion was by an understanding of the parties at the hearing that they were production employees." But this reference is to "truck drivers" whose duties were described by the company official as quoted above. It

tends to exclude the OTR drivers rather than to stipulate their inclusion.

The other points raised do not require discussion.

The company was not justified in refusing to bargain. Enforcement is GRANTED.

APPENDIX

* * * *

The Employer (a wholly-owned subsidiary of Genesco) is a corporation engaged in the manufacture of men's work clothing and sportswear in four plants located at Waco, Temple, Hillsboro and Dublin, Texas, with its principal office and place of business at Waco. The Waco plant with approximately 900 employees produces men's long- and short-sleeved shirts, men's work trousers, boys' dress-up jeans and, under a Government contract, navy dungarees. The Temple plant with approximately 300 employees produces men's casual slacks and, under a Government contract, combat trousers. The Dublin plant with approximately 170 employees produces boys' fancy dress-up jeans with patch pockets. The Hillsboro plant with approximately 130 employees produces men's work pants. From Waco the plants are located approximately 30 miles to Temple, 35 miles to Hillsboro, and 85 miles to Dublin.

There is much to be said on behalf of the position taken by the Employer to find a multiplant unit. In Waco there is an over-all manager and a director of

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manufacturing. Each of the other plants has a plant manager, while Waco has separate managers for the sewing lines, cutting, pressing, and shipping. The requirement for production in all four plants is determined centrally by the Employer's production planning committee, including plant schedules. All necessary material such as piece goods, threads, zippers, buttons, so forth are centrally procured. Such items are warehoused in Waco and dispensed to the separate plants as needed. The central cutting department at Waco marks and cuts the material to be used and sees that it is properly ticketed and made ready for the sewing lines. The plants outside of Waco are supplied the cut parts by the Employer's trucks which operate between plants on a daily basis. After the cut parts have been sewn, they are returned to the Waco plant, where all of the sewn products are further processed, going first to the central pressing department where they are pressed and checked for defects. After this they are taken to the central shipping department where they are properly assorted and shipped to customers. Records of these various stages of production and operation are kept at Waco.

Many support services are furnished by the Waco plant to the other plants. A central technical service department is responsible for seeing that all plants have made available to them the latest sewing machinery and equipment and techniques. A central quality control department checks on daily reports on the quality of all products received from the plants to determine that standards are adhered to. A central research and development section builds new ma-

chinery and equipment for various sewing lines to improve efficiency. A central plant maintenance department is responsible for the maintenance of all facilities and equipment other than sewing machines in the plants. A central engineering section fabricates the samples for garments which are later sewn in one of the plants. Ninety percent of the samples are fabricated in the Waco plant, with the balance of the time being spent in the other three plants. A central woodwork maintenance section makes furniture and other wood equipment and repairs it for all plants. A central accident and safety control section establishes and maintains uniform safety standards in all plants. A central maintenance of sewing machines has the responsibility for the maintenance of sewing machines at all four plants. A central machine storage department stores and maintains sewing machinery and equipment which has been taken out of production. Further details of these central operations are discussed below.

A central personnel department in Waco establishes personnel and industrial relations' policies which are uniform. It has a standard test required for hiring employees. It has standard termination procedures to be followed. It prepares and issues an employee handbook. Personnel records for all employees are maintained here. The central industrial engineering section also establishes standards of pay for employees on each job classification and production line for all plants. The central training department prepares a manual for training sewing machine operators which is the guideline in training new employees or retrain-

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ing old operators upon the introduction of a new garment. Central industrial engineering department also establishes the number of employees to fill each job classification; and when necessary, overtime for all plants is determined centrally and scheduled.

The employees at all plants enjoy uniform job benefits. Holidays, vacations, group hospitalization, and group life insurance are the same. Seniority for holidays and vacation benefits is employer-wide. A central credit association is operated for all plants from Waco. A stock purchase plan is available to all employees. Certain discounts on shoes manufactured by Genesco are available when purchased from certain stores in the area. Incentive standards are the same in all plants for the same work. Starting rates, hourly rates within the same job classification are uniform.

Thus, as we have seen from the point of sharing a community of interest, there is ample support for considering all four plants as a multiplant unit. However, other factors are not present which would compel finding a multiplant unit to be appropriate. No union is seeking to represent the employees in all four plants, and there is no previous history of collective bargaining among the employees to support such a unit contention. As set forth below, we have found that there is an appropriate unit commensurate with the unit sought by the Petitioner in the Waco plant.

While it is not necessary in deciding that the Waco plant constitutes an appropriate unit to find that each of the three other plants separately constitute an ap-

propriate unit, it is important to note that the three other plants do exercise self-autonomy on a day-to-day basis within the operational limits prescribed by the central authority. Thus, each plant has a separate manager, is geographically separated, and is therefore a distinct and readily identifiable group. The manager has authority to hire employees temporarily or on probation subject to final approval by the central authority. He has the right effectively to recommend discharge of employees. The withholding of approval of any such recommendations is a rarity. Workers are recruited locally through newspapers and radio. They make application to the local plant. Duplicate personnel records are kept at the local plant. Payrolls are prepared at the local plant. Temple issues its own pay checks on a local bank, while Hillsboro issues pay checks for both its employees and those of Dublin. Interplant seniority is limited to financial matters, such as holidays and vacations, and an actual transfer to another plant results in a loss of job seniority. Transfers between plants are at an absolute minimum and are effected as an accommodation to an employee. Each plant keeps its own quality control record by machine and major defects detected at the time of the inspection at Waco are returned to the plant where it was produced. Temple and Dublin each have two sewing machine mechanics, while Hillsboro has one. There are seven machine mechanics at Waco who do at times travel to the other plants to assist. Central plant maintenance department does send its employees to the plants outside of Waco to make necessary repairs and construction. The central woodwork maintenance section renders similar services, inasmuch

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as furniture and wood equipment is concerned. The greatest amount of time rendered by any of the central departments or sections to the three other plants appears to be that of central plant maintenance department, estimated at 30 percent of the time. This is not too significant when it is considered that this time is spread between three plants. Further, and more important, all people servicing the three other plants traveling from Waco punch in and out at Waco and are considered part of the Waco work force and do not become identified as part of the outside plants. The services centrally furnished both by supervisory and employee help, while important to the efficiency and overall production of all plants, have an insignificant impact on the identity and day-to-day autonomy of the outside plants. While the sewing operation is but one of several steps as outlined above in the production of the finished garment such integration under circumstances as present in this case is considered "a less significant factor" in the resolution of the importance to be attached to factors leading to a determination of an appropriate unit because of modern manufacturing techniques, improved communications and handling facilities, and the great need to take advantage of labor markets not readily available at the central location. *Black & Decker Manufacturing Company*, 147 NLRB 825. Some transfer of sewing work between the plants does not appear significant on this record.

* * * *

APPENDIX B-1

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)

Petitioner,)

v. No. 71-2677

)

J. M. WOOD MANUFACTURING COMPANY, INC.,)

Respondent.)

)

U.S. COURT OF APPEALS

FILED

SEP 14 1972

EDWARD W. WADSWORTH
CLERK

JUDGMENT

Before: AINSWORTH, GODBOLD and MORGAN, Circuit Judges.

THIS CAUSE came on to be heard upon the application of the National Labor Relations Board for the enforcement of a certain order issued by it against the Respondent, J. M. Wood Manufacturing Company, Inc., its officers. agents, successors, and assigns on January 25, 1971. The Court heard argument of respective counsel on March 28, 1972, and has considered the briefs and transcript of record filed in this cause. On August 23, 1972, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's order.

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Appendix B-1

ON CONSIDERATION WHEREOF, it is hereby ordered and adjudged by the United States Court of Appeals for the Fifth Circuit that the said Order of the National Labor Relations Board in said proceeding be enforced and that J. M. Wood Manufacturing Company, Inc., its officers, agents, successors, and assigns abide by and perform the directions of the Board in said order contained.

ENTERED:

SEP 14 1972

APPENDIX B-2

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2677

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

J. M. WOOD MANUFACTURING COMPANY, INC.,
Respondent.

Application for Enforcement of an Order of the National Labor Relations Board (Texas Case)

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC
(Opinion Aug. 23, 1972, 5 Cir., 1972, ____ F.2d ____).

(November 13, 1972)

Before AINSWORTH, GODBOLD and MORGAN, Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

Adm. Office, U. S. Courts—Scofields' Quality Printers, Inc., N. O., La.

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APPENDIX C

[1/25/71]
188 NLRB No. 4

D-4730
Waco, Tex.

DECISION AND ORDER

Upon an original charge and first amended charge filed on July 14 and August 4, 1970, by Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, herein called the Union, and duly served on J. M. Wood Manufacturing Company, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 16, issued a complaint on August 6, 1970, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on or about June 17, 1970, following a Board election in Case 16-RC-5076 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; [1/] and that, commencing on or about June 30, 1970, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 17, 1970, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. The Respondent admits all of the factual allegations of the complaint, except those paragraphs which relate to the underlying representation case which allege that a majority of the employees of the Respondent in the unit described in the complaint, by an election, designated and selected the Union as their representative for the purpose of collective bargaining and that on June 17, 1970, the Regional Director certified the Union. The Respondent also denies that it violated Section 8(a)(5) and (1) of the Act.

On August 28, 1970, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment in which

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[1] Official notice is taken of the record in the representation proceeding, Case 16-RC-5076, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938, enfd. 388 F.2d 683 (C.A. 4, 1968); Golden Age Beverage Co., 167 NLRB 151; Intertype Co. v. Penello, 269 F. Supp. 573 (D.C. Va., 1967); Follett Corp., 164 NLRB 378, enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

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he contends that the Respondent's answer to the complaint raises no issue not already disposed of in the representation proceeding, and prays the Board to grant the Motion for Summary Judgment. Subsequently, on September 10, 1970, the Board issued an Order Transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a Response to Notice To Show Cause. On October 30, 1970, the Board issued its Order Granting Motion and Amending Complaint in which the Board granted the General Counsel's Motion To Amend Complaint, amended the complaint to reflect the proper date of the election in which the Union was selected as the employees' bargaining representative, and permitted the Respondent to file with the Board an amended answer to the complaint and any supplemental or amended response to the Motion for Summary Judgment previously filed. Thereafter, by telegram dated November 9, 1970, the Respondent moved to amend paragraph 3 of its answer by deleting the incorrect date "February 11, 1969," and substituting the correct date "July 16, 1969," thereby admitting, rather than denying, paragraph 3 of its answer "that pursuant to said election, the Regional Director for the Sixteenth Region of the National Labor Relations Board certified the Union as the exclusive bargaining representatives of said employees."

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this proceeding, including the record in Case 16-RC-5076, the Board makes the following:

Ruling on the Motion for Summary Judgment

As reflected above, the Respondent's answer admits all of the factual allegations of the complaint, including its refusal to recognize and bargain with the Union which had been certified as the collective-bargaining representative of the employees described in the complaint. Affirmatively, the Respondent raises defenses relating to (1) the appropriateness and scope of the unit, (2) the Union's failure to represent an uncoerced majority, and (3) the Regional Director's erroneous rulings concerning challenges to ballots and objections to the election. [2] In its response to the Notice To Show Cause, the Respondent contends that a summary judgment cannot be granted if material facts remain in dispute after the pleadings have been entered. By this assertion, and more specifically by its denials, in whole or in part, of the allegations of the complaint, the affirmative defenses alleged in its answer, and the arguments propounded in its response to the General Counsel's motion, the Respondent is attempting to relitigate the same issues which it raised in the representation proceeding in Case 16-RC-5076.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a

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[2] Respondent also contends that the Motion for Summary Judgment should be denied because the Board's denial of Respondent's requests for review filed at various stages of the representation (Cont'd)

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Respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding. 3/

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

The Respondent is a corporation duly organized under and existing by virtue of the laws of the State of Texas, having an

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3/ (Cont'd) case proceeding did not involve independent review by the Board of the record in Case 16-RC-5076, citing, inter alia, Pepsi-Cola Bottling Company v. N.L.R.B., 409 F.2d 878 (C.A. 2). However, in ruling on this motion, the Board has, as indicated, reviewed the record in that case. On the basis of such review, we find no ground for disturbing the Regional Director's findings and conclusions.

4/ See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

office and place of business in the city of Waco, Texas, where it is, and has been at all times material herein, engaged in the manufacture, sale, and distribution of work clothes, sportswear, and related products. During the past year, the Respondent, in the course and conduct of its business operations, purchased, transferred, and delivered to its Waco, Texas, plant goods and materials valued in excess of $50,000, which goods and materials were transported to said place of business directly from the States of the United States other than the State of Texas, and sold and shipped finished products, valued in excess of $50,000, to points outside of the State of Texas.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

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All production and maintenance employees of Respondent employed at its Waco, Texas, plant including plant clerical employees and watchmen exclusive of office clerical employees, professional employees, guards, and supervisors as defined in the Act.

2. The certification

On July 16, 1969, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 16 designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on June 17, 1970, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about June 23, 1970, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about June 30, 1970, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since June 30, 1970, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the

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initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785; Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. J. M. Wood Manufacturing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of Respondent employed at its Waco, Texas, plant including plant clerical employees and watchmen exclusive of office clerical employees, professional employees, guards, and supervisors constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since June 17, 1970, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about June 30, 1970, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, J. M. Wood Manufacturing Company, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment, with Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

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All production and maintenance employees of Respondent employed at its Waco, Texas, plant including plant clerical employees and watchmen exclusive of office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Waco, Texas, plant copies of the attached notice marked "Appendix." 4/ Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places,

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4/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C., January 25, 1971.

/s/	John H. Fanning,	Member
/s/	Gerald A. Brown,	Member
/s/	Howard Jenkins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

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WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees of Respondent employed at its Waco, Texas, plant including plant clerical employees and watchmen exclusive of office clerical employees, professional employees, guards, and supervisors as defined in the Act.

J. M. WOOD MANUFACTURING COMPANY, INC.
Employer

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 8A24 Federal Office Building, 819 Taylor Street, Fort Worth, Texas 76102, Telephone 817-334-2921.

Appendix C

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

J. M. WOOD MANUFACTURING COMPANY, INC.

Employer

and

SOUTHWEST REGIONAL JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

Petitioner

Case No. 16-RC-5076

Decision and Direction of Election

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:[1]

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[1] Both parties filed briefs which have been duly considered. The Employer filed two motions to correct the record in respect to typographical errors in the stenographic record which were unopposed. The record stands corrected.

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Appendix C

Decision and Direction of Election

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[1]

All production and maintenance employees of the Employer at its Waco, Texas, plant, including plant clerical employees, and watchman, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

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[1] The parties are not in disagreement as to the composition of the unit. The Petitioner sought a single plant unit at Waco. The Employer urged a multiplant unit to include the three remaining plants.

The Employer (a wholly-owned subsidiary of Genesco) is a corporation engaged in the manufacture of men's work clothing and sportswear in four plants located at Waco, Temple, Hillsboro and Dublin, Texas, with its principal office and place of business at Waco. The Waco plant with approximately 900 employees produces men's long- and short-sleeved shirts, men's work trousers, boys' dress-up jeans and, under a Government contract, navy dungarees. The Temple plant with approximately 300 employees produces men's casual slacks and, under a Government contract, combat trousers. The Dublin plant with approximately 170 employees produces boys' fancy dress-up jeans with patch pockets. The Hillboro plant with approximately 130 employees produces men's work pants. From Waco the plants are located approximately 30 miles to Temple, 35 miles to Hillsboro, and 85 miles to Dublin.

(*Continued on the following page*)

Appendix C

Decision and Direction of Election

(*Continued from preceding page*)

There is much to be said on behalf of the position taken by the Employer to find a multiplant unit. In Waco there is an over-all manager and a director of manufacturing. Each of the other plants has a plant manager, while Waco has separate managers for the sewing lines, cutting, pressing, and shipping. The requirement for production in all four plants is determined centrally by the Employers' production planning committee, including plant schedules. All necessary material such as piece goods, threads, zippers, buttons, so forth are centrally procured. Such items are warehoused in Waco and dispensed to the separate plants as needed. The central cutting department at Waco marks and cuts the material to be used and sees that it is properly ticketed and made ready for the sewing lines. The plants outside of Waco are supplied the cut parts by the Employer's trucks which operate between plants on a daily basis. After the cut parts have been sewn, they are returned to the Waco plant, where all of the sewn products are further processed, going first to the central pressing department where they are pressed and checked for defects. After this they are taken to the central shipping department where they are properly assorted and shipped to customers. Records of these various stages of production and operation are kept at Waco.

Many support services are furnished by the Waco plant to the other plants. A central technical service department is responsible for seeing that all plants have made available to them the latest sewing machinery and equipment and techniques. A central quality control department checks on daily reports on the quality of all products received from the plants to determine that standards are adhered to. A central research and development section builds new machinery and equipment for various sewing lines to improve efficiency. A central plant maintenance department is responsible for the maintenance of all facilities and equipment other than sewing machines in the plants. A central engineering section fabricates the samples for garments which are later sewn in one of the plants. Ninety percent of the samples are fabricated in the Waco plant, with the balance of the time being spent in the other three plants. A central woodwork maintenance section makes furniture and other wood equipment and repairs it for all plants. A central accident and safety control section establishes and maintains uniform safety standards in all plants. A central maintenance of sewing machines has the responsibility for the maintenance of sewing machines at all four plants. A central machine storage department stores and maintains sewing machinery and equipment which has been taken out of production. Further details of these central operations are discussed below.

(*Continued on the following page*)

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Appendix C

Decision and Direction of Election

(*Continued from preceding page*)

A central personnel department in Waco establishes personnel and industrial relations' policies which are uniform. It has a standard test required for hiring employees. It has standard termination procedures to be followed. It prepares and issues an employee handbook. Personnel records for all employees are maintained here. The central industrial engineering section also establishes standards of pay for employees on each job classification and production line for all plants. The central training department prepares a manual for training sewing machine operators which is the guideline in training new employees or retraining old operators upon the introduction of a new garment. Central industrial engineering department also establishes the number of employees to fill each job classification; and when necessary, overtime for all plants is determined centrally and scheduled.

The employees at all plants enjoy uniform job benefits. Holidays, vacations, group hospitalization, and group life insurance are the same. Seniority for holidays and vacation benefits is employer-wide. A central credit association is operated for all plants from Waco. A stock purchase plan is available to all employees. Certain discounts on shoes manufactured by Genesco are available when purchased from certain stores in the area. Incentive standards are the same in all plants for the same work. Starting rates, hourly rates within the same job classification are uniform.

Thus, as we have seen from the point of sharing a community of interest, there is ample support for considering all four plants as a multiplant unit. However, other factors are not present which would compel finding a multiplant unit to be appropriate. No union is seeking to represent the employees in all four plants, and there is no previous history of collective bargaining among the employees to support such a unit contention. As set forth below, we have found that there is an appropriate unit commensurate with the unit sought by the Petitioner in the Waco plant.

While it is not necessary in deciding that the Waco plant constitutes an appropriate unit to find that each of the three other plants separately constitute an appropriate unit, it is important to note that the three other plants do exercise self-autonomy on a day-to-day basis within the operational limits prescribed by the central authority. Thus, each plant has a separate manager, is geographically separated, and is therefore a distinct and readily identifiable group. The manager has authority to hire employees temporarily or on probation subject to final approval by the central

(*Continued on the following page*)

Appendix C

Decision and Direction of Election

(*Continued from preceding page*)

authority. He has the right effectively to recommend discharge of employees. The withholding of approval of any such recommendations is a rarity. Workers are recruited locally through newspapers and radio. They make application to the local plant. Duplicate personnel records are kept at the local plant. Payrolls are prepared at the local plant. Temple issues its own paychecks on a local bank, while Hillsboro issues paychecks for both its employees and those of Dublin. Interplant seniority is limited to financial matters, such as holidays and vacations; and an actual transfer to another plant results in a loss of job seniority. Transfers between plants are at an absolute minimum and are effected as an accommodation to an employee. Each plant keeps its own quality control record by machine and major defects detected at the time of the inspection at Waco are returned to the plant where it was produced. Temple and Dublin each have two sewing machine mechanics, while Hillsboro has one. There are seven machine mechanics at Waco who do at times travel to the other plants to assist. Central plant maintenance department does send its employees to the plants outside of Waco to make necessary repairs and construction. The central woodwork maintenance section renders similar services, inasmuch as furniture and wood equipment is concerned. The greatest amount of time rendered by any of the central departments or sections to the three other plants appears to be that of central plant maintenance department, estimated at 30 percent of the time. This is not too significant when it is considered that this time is spread between three plants. Further, and more important, all people servicing the three other plants traveling from Waco punch in and out at Waco and are considered part of the Waco work force and do not become identified as part of the outside plants. The services centrally furnished both by supervisory and employee help, while important to the efficiency and overall production of all plants, have an insignificant impact on the identity and day-to-day autonomy of the outside plants. While the sewing operation is but one of several steps as outlined above in the production of the finished garment such integration under circumstances as present in this case is considered "a less significant factor" in the resolution of the importance to be attached to factors leading to a determination of an appropriate unit because of modern manufacturing techniques, improved communications and handling facilities, and the great need to take advantage of labor markets not readily available at the central location. *Black & Decker Manufacturing Company*, 147 NLRB 825. Some transfer of sewing work between the plants does not appear significant on this record.

(*Continued on the following page*)

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Appendix C

Decision and Direction of Election

(*Continued from preceding page*)

It was previously stated that it would not be necessary to establish in this record that the three other plants are each separately an appropriate unit in order to find that the Waco plant is an appropriate unit. Since the Waco plant embodies the complete authority held by the Employer as a subsidiary corporation, performs all functions of production from receipt of orders to delivery, and operates in the fashion previously described above in support of the Employer's position, there can be no question that the Waco plant is geographically separate, distinct, homogenous, and completely autonomous. Since the Board has repeatedly held that a plant constituting a single-unit location is presumptively appropriate under the statute, we so find that the Waco plant constitutes an appropriate unit, rejecting the legislative arguments and other authorities advanced by the Employer in its brief to the contrary. *Haag Drug Company, Incorporated*, 169 NLRB No. 111; *Save-On Drugs, Inc.* 138 NLRB 1032; *Gordon Mills, Inc.*, 145 NLRB 771, 773; and *Davis Cafeteria*, 160 NLRB 1141. The Employer's contention that the request of the Waco plant as a unit represents Petitioner's extent of organization and therefore as such should be denied, is rejected. The Act proscribes that such a test as extent of organization be given controlling weight which is not done in this case. The statute does not specify that the unit be the most appropriate unit or a more appropriate unit, but merely that it be an appropriate unit. Nothing in this record compels a finding that the most comprehensive unit be the appropriate unit. *Bambergers Paramus, etc.*, 151 NLRB 748, 751; and see cases previously cited.

There appears to be one plant clerical employee who issues parts from the stockroom. There is no contention that plant clericals be excluded; and in accordance with the established Board precedent, we include plant clericals in the unit. *Lilliston Implement Co., Electronics Division*, 121 NLRB 868. We have also included the watchman in the unit in the absence of any contention that he should be excluded, particularly since he is not armed and performs services limited to checking the plant for fire hazards. *Thunderbird Hotel Co.*, 144 NLRB 84.

Appendix C

Direction of Election

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[3] Those

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[3] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 8A24 Federal Office Building, 819 Taylor Street, Fort Worth, Texas 76102, on or before January 23, 1969. Under Board of directives, no extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

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eligible shall vote whether (or not) they desire to be represented for collective-bargaining purposes by Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO.

/s/ ELMER DAVIS
Elmer Davis,
Regional Director, Region 16

Dated January 16, 1969

(SEAL)

at Forth Worth, Texas

APPENDIX D

Employer Exhibit 1

Flow of Production and Production Functions Through Waco-Temple-Dublin-Hillsboro

(Photoprint)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

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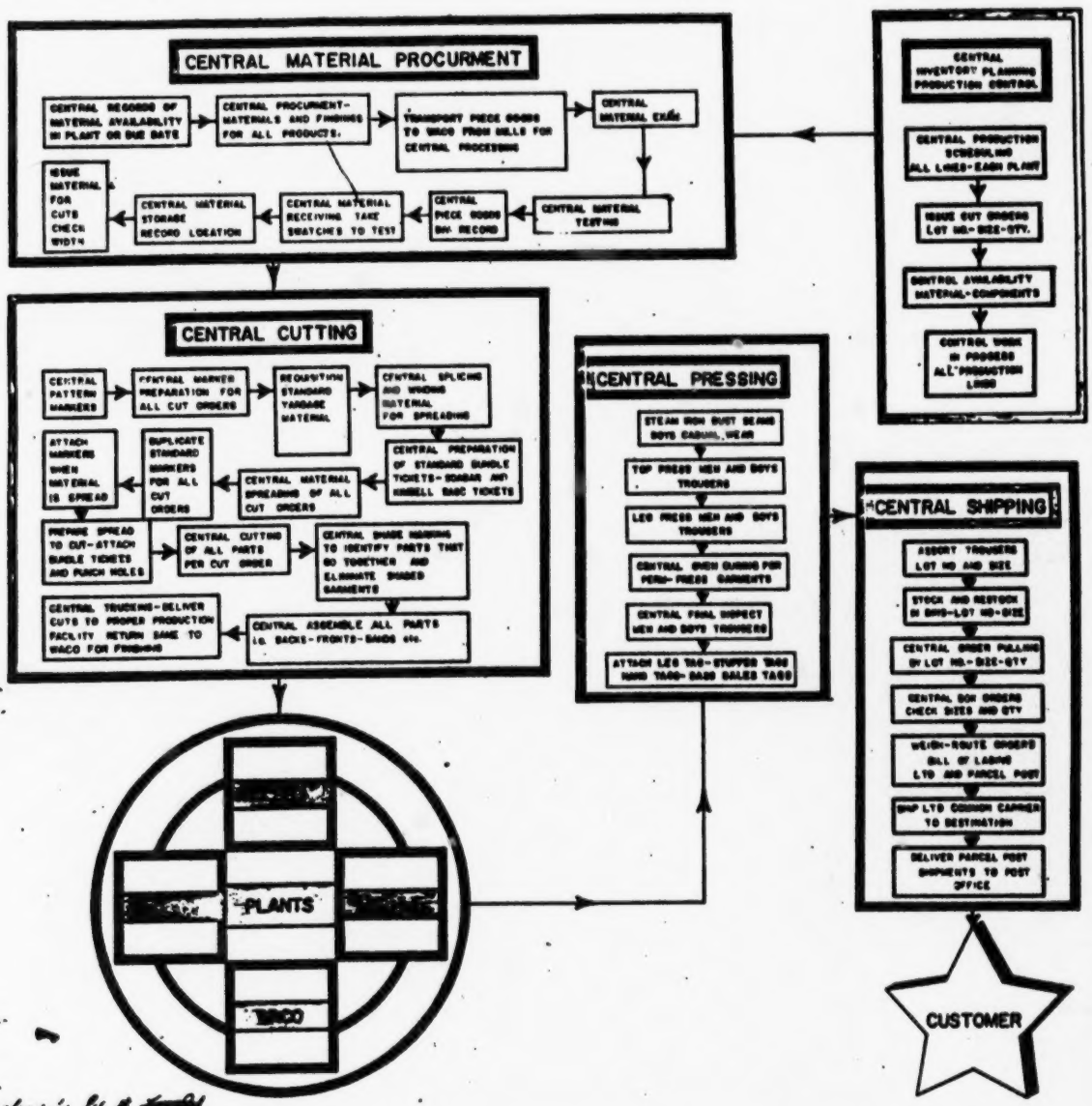
J. M. WOOD MANUFACTURING CO. INC.

FLOW OF PRODUCTION AND PRODUCTION FUNCTIONS THROUGH WACO-TEMPLE-DUBLIN-HILLSBORO


CENTRAL MATERIAL PROCURMENT
CENTRAL RECORDS OF MATERIAL AVAILABILITY IN PLANT OR DUE DATE
CENTRAL PROCURMENT-MATERIALS AND FINISHES FOR ALL PRODUCTS.
TRANSPORT PIECE GOODS TO WACO FROM MILLS FOR CENTRAL PROCESSING
CENTRAL MATERIAL EXAM
CENTRAL MATERIAL TESTING
CENTRAL PIECE GOODS INV. RECORD
CENTRAL MATERIAL RECEIVING TAKE SWATCHES TO TEST
CENTRAL MATERIAL STORAGE RECORD LOCATION
ISSUE MATERIAL FOR CUTS CHECK WIDTH
CENTRAL INVENTORY PLANNING PRODUCTION CONTROL
CENTRAL PRODUCTION SCHEDULING ALL LINES-EACH PLANT
ISSUE CUT ORDERS LOT NO.-SIZE-QTY.
CONTROL AVAILABILITY MATERIAL-COMPONENTS
CONTROL WORK IN PROGRESS ALL PRODUCTION LINES
CENTRAL CUTTING
CENTRAL PATTERN MARKERS
CENTRAL MARKER PREPARATION FOR ALL CUT ORDERS
REQUISITION STANDARD YARDAGE MATERIAL
CENTRAL SPLICING AND MATCHING MATERIAL FOR SPREADING
CENTRAL PREPARATION OF STANDARD BUNDLE TICKETS-SOABAR AND KIMBELL BASE TICKETS
CENTRAL MATERIAL SPREADING OF ALL CUT ORDERS
DUPLICATE STANDARD MARKERS FOR ALL CUT ORDERS
ATTACH MARKERS WHEN MATERIAL IS SPREAD
PREPARE SPREAD TO CUT-ATTACH BUNDLE TICKETS AND PUNCH HOLES
CENTRAL CUTTING OF ALL PARTS PER CUT ORDER
CENTRAL SHADE MARKING TO IDENTIFY PARTS THAT GO TOGETHER AND ELIMINATE SHADED GARMENTS
CENTRAL ASSEMBLE ALL PARTS I.E. BACKS-FRONTS-BANDS etc.
CENTRAL TRUCKING-DELIVER CUTS TO PROPER PRODUCTION FACILITY RETURN BANK TO WACO FOR FINISHING
CENTRAL PRESSING
STEAM IRON DUST BANK BOYS CASUAL WEAR
TOP PRESS MEN AND BOYS TROUSERS
LEG PRESS MEN AND BOYS TROUSERS
CENTRAL OVEN CURING FOR PERM-PRESS GARMENTS
CENTRAL FINAL INSPECT MEN AND BOYS TROUSERS
ATTACH LEG TAG-STUFFER TAGS HANG TAGS-BAND SALES TAGS
CENTRAL SHIPPING
ASSORT TROUSERS LOT NO AND SIZE
STOCK AND RESTOCK IN BINS-LOT NO-SIZE
CENTRAL ORDER PULLING BY LOT NO.-SIZE-QTY
CENTRAL BOX ORDERS CHECK SIZES AND QTY
WEIGH-ROUTE ORDERS BILL OF LADING LTD AND PARCEL POST
SHIP LTD COMMON CARRIER TO DESTINATION
DELIVER PARCEL POST SHIPMENTS TO POST OFFICE
PLANTS
WACO
CUSTOMER

Employee Ref. # [illegible]

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Appendix D

Employer Exhibit 2

Centralized Functional Operations for Service and Control of Branch Plants Waco-Hillsboro-Dublin-Temple

(Photoprint)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

J.M. WOOD MANUFACTURING CO., INC.

CENTRALIZED FUNCTIONAL OPERATIONS
FOR SERVICE AND CONTROL OF BRANCH PLANTS
WACO-HILLSBORO-DUBLIN-TEMPLE

Emphasis by ICC Examiner

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Appendix D

LET'S SET THE RECORD STRAIGHT

Wood Manufacturing Company, Part of the 100 Million Dollar Genesco, Inc. wants you to believe that your union, the Amalgamated, does not want to give the Wood employees the chance to vote on whether or not they want a Union.

The real facts are: Your Union, following the request of a majority of the Waco plant workers, filed a petition with the U. S. Government National Labor Relations Board asking the Board to hold an election in the Waco plant. The Company tried to stop that election. WHY? Because your employer wanted more time, try to win you away from your Union by suddenly appearing to be interested only in your welfare.

The Company's excuse for stalling the election is that they say they want the Dublin, Hillsboro, and Temple employees to also vote and while the Labor Board is examining this excuse for not having a fast election the Company has time to work on you.

The Amalgamated pledges to you that just as soon as the workers at Dublin, Hillsboro and Temple ask the Union to file for Labor Board Elections in each of those plants, that's exactly what we will do.

And the Labor Board has agreed with your Union and has ordered that an election be held at the Waco Plant within the next 3 weeks.

Now the Company hopes to upset an early election at the Waco Plant by appealing to Washington to "Reconsider the decision of the Local Board."

No matter how the Company stalls, we will have an election • • • and we will give you the true and undistorted

facts on when it will take place * * * and *every body in the Waco Plant,* outside of Management Personnel, Office-Clerical and Professional Employees, and Guards, *will have the right to vote.*

Attached is a Union Membership Card—if you are not a member, SIGN AND MAIL YOUR CARD TODAY.

IN THE UNION THERE IS STRENGTH

VOTE AMALGAMATED

AMALGAMATED CLOTHING WORKERS OF AMERICA

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-909

J. M. WOOD MANUFACTURING COMPANY, INC.,

PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

AND

SOUTHWEST REGIONAL JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. The Company manufactures men's work clothing and sportswear in four plants located at Waco, Temple, Hillsboro, and Dublin, Texas (Pet. App. 31a; A. 10).[1] On November 25, 1968, the Union[2] filed a

[1] "A." refers to the printed appendix in the court below.

[2] The Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO.

representation petition with the Board's Regional Director requesting certification as bargaining representative for a unit consisting of the employees at the Waco plant, the Company's principal place of business employing approximately 900 persons (Pet. App. 30a, 31a, n. 2; A. 117-119). The Company opposed the petition, contending, as it does in this Court, that the only appropriate unit was an overall unit encompassing the employees at all four of its plants (Pet. App. 31a, n. 2; A. 11-12).

After a hearing, the Regional Director concluded that a unit comprising the Waco plant was appropriate for bargaining purposes. He pointed out that "the Board has repeatedly held that a plant constituting a single-unit location is presumptively appropriate under the statute," and found that this presumption had not been rebutted here. "[T]he Waco plant embodies the complete authority held by the Employer as a subsidiary corporation, performs all functions of production from receipt of orders to delivery," and "is geographically separate, distinct, homogeneous, and completely autonomous." (Pet. App. 35a.) [3]

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[3] The distance from Waco to the Company's other plants in Temple, Hillsboro and Dublin is, respectively, 30, 35 and 85 miles (Pet. App. 31a, n. 2). Although the Company's general manager and director of manufacturing is at Waco, each of the other plants has a plant manager who is "in command" and has authority to hire and discharge employees (Pet. App. 32a-34a). While the exercise of this authority is subject to approval by the Company's manufacturing director, there has been only one instance when a plant manager's action in this regard has been overruled (A. 67-68).

Seniority is on a plant basis for permanent transfers, job changes, layoffs and recall to work; employees who transfer from

While acknowledging that, "from the point of sharing a community of interest, there is ample support for considering all four plants as a multiplant unit" (Pet. App. 33a), the Director rejected the Company's contention that this was the only appropriate unit. The Director noted the substantial "self-autonomy on a day-to-day basis" exercised by each plant, the minimal amount of interplant transfers, and the fact that "[t]he services centrally furnished * * * [from Waco] while important to the efficiency and overall production of all plants, have an insignificant impact on the identity and day-to-day autonomy of the outside plants" (Pet. App. 33a-34a). He noted, in addition, that there was no history of bargaining on a multiplant basis, and that no union was seeking to represent the employees on a basis broader than the Waco plant (Pet. App. 33a).

Accordingly, the Regional Director ordered an election among the Waco plant employees (Pet. App. 31a, 36a-37a). (The Board denied the Company's petition for review of the Regional Director's decision (Pet. App. 2a, n. 2).) The Union subsequently was certified as the representative of those employees (Pet. App. 18a; A. 295-296). Thereafter, the Company refused to bargain, the Union filed unfair labor practice

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one plant to another lose seniority in these areas (Pet. App. 34a). Interplant transfers of employees have been rare and job posting is done on a single plant basis (Pet. App. 34a; A. 106-107).

Production requirements for all four plants are determined at Waco and uniform personnel and industrial policies are established at Waco (Pet. App. 33a-34a). Standards of pay for employees are set at Waco and employees at all plants enjoy uniform job benefits, including holidays, vacations, and group life insurance (*ibid.*).

charges, and the Board found that the Company had violated Section 8(a)(5) and (1) of the Act (Pet. App. 18a, 24a). The Board ordered the Company to bargain with the Union upon request (Pet. App. 24a-25a, 27a).

The court of appeals enforced the Board's order (Pet. App. 1a-8a), concluding that the Board had not abused its discretion in designating the Waco plant as the bargaining unit in view of the distinct character of that plant, the distance between the plants, the day-to-day autonomy of each plant, the lack of interplant transfers, "and the extent of organization, so long as not controlling" (Pet. App. 4a).

2. Section 9(b) of the Act empowers the Board to decide "in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *." The basic question presented here—whether the Board abused its broad discretion under Section 9(b) by establishing a bargaining unit limited to the employees of the Company's Waco plant—turns on the facts of this particular case and therefore does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 491.

In any event, in view of the facts that Section 9(b) specifically recognizes the appropriateness of a plant unit, that the plants here had substantial autonomy and were geographically separated, and that there was a minimal amount of interplant transfers, there is rational basis for the Board's determination. In mak-

ing its unit determination, the Board did not violate Section 9(c)(5)[4] by relying on the fact that "[n]o union is seeking to represent the employees in all four plants" (Pet. App. 33a), since this Court has made clear that Section 9(c)(5) "was not intended to prohibit the Board from considering the extent of organization as one factor, though not the controlling factor, in its unit determination." *National Labor Relations Board* v. *Metropolitan Life Insurance Co.*, 380 U.S. 438, 442. In view of all of the other factors that justify a single plant unit here (*supra*, p. 2), the court below correctly concluded that "extent of organization" was not a controlling factor in the Board's determination.[5]

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[4] Section 9(c)(5) provides:

> In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

[5] *May Department Stores Co.* v. *National Labor Relations Board*, 454 F. 2d 148 (C.A. 9), certiorari denied, October 10, 1972, No. 71-1646, and *Westward-Ho Hotel Co.* v. *National Labor Relations Board*, 437 F. 2d 1110 (C.A. 9), relied on by petitioner (Pet. 8, 12), are factually distinguishable. In *Westward-Ho*, the court disapproved a unit confined to hotel kitchen workers in the face of its finding that the Board's policy was to certify only hotel-wide units in that industry. 435 F. 2d at 1113-1114. The court held that, in these circumstances, there is a presumption that the unit determination was controlled by extent of organization, and that the Board had not given reasons for its choice which effectively rebutted that presumption. *Id.* at 1116. Similarly, in *May Department Stores*, the court held that a unit composed of warehouse employees excluding workroom employees must be deemed to rest on extent of organization, where its selection deviated not only from customary Board policy, but also from a unit found appropriate at the same facility several years earlier, and where, in the court's view, the Board had no adequate explanation for the deviation. 454 F. 2d at

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,

PATRICK HARDIN,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

LINDA SHER,
Attorney,
National Labor Relations Board.

JANUARY 1973.

150-151. Regardless of the correctness of these decisions, the situation here is entirely different. There is no indication that the Board has departed from past policy, and it has advanced reasons for its unit determination showing that extent of organization was not a controlling factor.

Local 1325, Retail Clerks v. *National Labor Relations Board* (*Adams Drug*), 414 F. 2d 1194 (C.A. D.C.), and *National Labor Relations Board* v. *Harry T. Campbell Sons'* Corporation, 407 F. 2d 969 (C.A. 4) (Pet. 8, 11-13), are also distinguishable. In *Adams Drug*, the court found a state-wide unit of drug stores to be inappropriate, finding it contrary to Board precedent, unsupportable geographically and administratively, and justified solely by extent of organization. 414 F. 2d at 1203-1205. And in *Harry Campbell*, the court found a unit composed of only one operation of an integrated quarry to be "arbitrary and capricious." 407 F. 2d at 970, 979. The unit determination here is not vulnerable on any of these grounds.

☆ U.S. Government Printing Office: 1972—473-084/458